IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.MC.No. 587 of 2007()

CP.61/2006 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOZHIKODE

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PETITIONER: ACCUSED

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1. K.C.BALAN, S/O. CHATHU,
   KANDURUTHI VEEDU, NEITHYATTU PARAMBA,
   POST PUTHIYARA, CALICUT.

2. VINEESH, S/O. SOMAN,
   KUTTIYOZHATHIL HOUSE, POST VELLIPARAMBA,
   KOZHIKODE.

3. SANTHOSH, S/O. RAJU,
   MUTHALAKALLAI PARAMBU, MUTHALAKULAM,
   KOZHIKODE.

4. ANOOP, S/O. BABURAJ,
   PALATPARAMBA HOUSE, PUTHIYARA P.O.,
   KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT & STATE

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1. A.K.JUBEE, S/O. ANDI,
   NEITHYATTU PARAMBA, KASABA AMSOM,
   KOZHIKODE TALUK.

2. SUB INSPECTOR OF POLICE,
   KASABA POLICE STATION, KOZHIKODE.

3. ASSISTANT COMMISSIONER OF POLICE,
   KOZHIKODE.

4. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.587 of 2007

Dated this the 21st day of March 2007

O R D E R

The petitioners are accused in C.P.No.61/06 before the learned Judicial First Class Magistrate Court III, Kozhikode. Cognizance has been taken on the basis of a private complaint filed by the complainant that is the first respondent herein. The grievance of the petitioners is that cognizance has been taken and process issued against the petitioners in gross disregard of the settled provisions of law. Active and alert application of mind to the relevant facts has not been made by the learned Magistrate. In these circumstances, it is prayed that cognizance taken may be set aside.

2. The report of the learned Magistrate was called for. The learned Magistrate fairly submits that cognizance was taken without adverting to the final report submitted by the investigating officer wherein the investigating officer had found that the allegations are not sustainable. The learned Magistrate submits that cognizance was taken without adverting to the principles in Vijayalaxmi v. Thomas [2002(3)KLT 530]

3. Notice has been given to the learned counsel for the respondent. The learned counsel for the respondent has not entered appearance. I am, in these circumstances satisfied that the matter can be disposed of on merits now.

4. In as much as cognizance has been taken admittedly without properly adverting to the legal principles, I am not in any way intending to express any opinion on merits about the acceptability of the complaint. I am satisfied that cognizance taken can be set aside and the learned Magistrate can be directed to consider the matter afresh. The learned Magistrate must consider the matter afresh uninfluenced by the course adopted by the learned Magistrate earlier or the course adopted by this court in setting aside the cognizance taken. In short, the matter will have to be considered afresh and appropriate decision taken on the question whether cognizance deserves to be taken. Needless to say, the learned Magistrate can call for the refer report in the case even if it were filed before some other court.

(R.BASANT, JUDGE)

jsr

The grievance of the petitioner is that cognizance has been taken by the learned Magistrate in a private complaint filed by the respondent/complainant without reference at all to the negative final report filed earlier before the learned Chief Judicial Magistrate by the investigating police official. This, the counsel contends, runs counter to the dictum in Vijayalaxmi v.

Thomas [2002(3)KLT 530]. Call for a report from the learned Magistrate. Was the final report available before the learned Magistrate when cognizance was taken? Give notice personally to the learned counsel for the first respondent who is appearing before the court below and file a memo to that effect in ten days. Further proceedings shall stand stayed till 20/03/2007.

Call on 20/03/2007.

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006